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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,347	07/14/2000	JOHANNES REINMULLER	HUBR-1162-PF	2655

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

15

DATE MAILED: 02/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/600,347

Applicant(s)

REINMULLER, JOHANNES

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) 1-5, 7-16, 19-21, 25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6, 17, 18, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION***Response to Amendment***

1. The amendment filed July 10, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the elimination of 2-9 kg per cm² of pressure applied to the skin as the particularly preferable range of pressures. The specification does not clearly disclose to the skilled artisan that the inventor did not consider the range of 2-9 kg per cm² to be irrelevant, but in fact the opposite by use of the phrase "particularly preferably" in at least two places in the specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 6, 17, 18 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Werdning* (US Pat. 3,878,837). *Werdning* discloses a massage apparatus for applying pressure and vibration to an area of skin for treatment of "cellulitis." One of ordinary skill in the art would realize that *Werdning's* use of the term "cellulites" is inaccurate and should have

used the term “cellulite” since “cellulites” is a bacterial infection of the skin and *Werdning* discusses bursting of nodules by massage and kneading. Bursting of infected nodules accumulated in connective tissue would clearly be contrary to safe medical practice. The apparatus comprises rollers that impact a user at variable frequency that may range from 25 to 100 impacts per second (this falls within the claimed range of 5 Hz to 20 Hz) and pressure is applied by exerting greater or lesser pressure on the handle of the support. It may also be possible to vary the intensity of the massage by adjusting the position of the rim of the apparatus relative to the rotor 2. The frequency of the apparatus is regulated by adjustment of a rheostat. *Werdning* also discloses that it is known in the art to treat cellulite by “manual massage, by kneading, which treatment is not without pain to the person being massaged, or by massage with a jet of water or air pressure or (sic) about 6 atmospheres” (col. 1, lines 15-18).

Werdning does not disclose the regional, transdermal pressure exerted on an area of the skin being 10 to 30 kg per cm² (claim 6); and the regional, transdermal pressure is sub-regional transdermal pressure of 10 to 30 kg per cm² of skin (claim 23).

Werdning teaches that massage treatment is not without pain. The 6 atmospheres of pressure disclosed is a pressure at which the nodules are being burst and is not limiting. Applicant has also disclosed that the pressure range of 2-9 kg per cm² is the particularly preferable range of applied pressure to the skin surface for the treatment of cellulite. The range of 10 to 30 kg per cm² has **not** been described by the Applicant as critical to produce new and unexpected results which are different in kind and not merely in degree from the results of the prior art. *In re Dreyfus*, 22 CCPA (Patents) 830, 73 F.2d 931, 24 USPQ 52; *In re Waite et al.*, 35 CCPA (Patents) 1117, 168 F.2d 104, 77 USPQ 586. Such ranges are

termed "critical" ranges, and the applicant has the burden of proving such criticality. *In re Swenson et al.*, 30 CCPA (Patents) 809, 132 F.2d 1020, 56 USPQ 372; *In re Scherl*, 33 CCPA (Patents) 1193, 156 F.2d 72, 70 USPQ 204. However, even though applicant's modification results in great improvement and utility over the prior art, it may still not be patentable if the modification was within the capabilities of one skilled in the art. *In re Sola*, 22 CCPA (Patents) 1313, 77 F.2d 627, 25 USPQ 433; *In re Normann et al.*, 32 CCPA (Patents) 1248, 150 F.2d 627, 66 USPQ 308; *In re Irmischer*, 32 CCPA (Patents) 1259, 150 F.2d 705, 66 USPQ 314. More particularly, where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Swain et al.*, 33 CCPA (Patents) 1250, 156 F.2d 239, 70 USPQ 412; *Minnesota Mining and Mfg. Co. v. Coe*, 69 App. D.C. 217, 99 F.2d 986, 38 USPQ 213; *Allen et al. v. Coe*, 77 App. D.C. 324, 135 F.2d 11, 57 USPQ 136.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the regional and sub-regional pressure applied using the *Werding* massage apparatus fall within the range of 10-30 kg per cm², since the pressure range of 10-30 kg per cm² is not critical and does not produce new and unexpected results which are different in kind and not merely in degree from the 6 kg per cm² disclosed by *Werding*.

4. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Werding* (US Pat. 3,878,837) as applied to claim 6 above, and further in view of *American Health* (Yikes! Cellulite, Nov. 1988). *Werding* discloses the inventive method as claimed except for repeating the method at least once.

It is notoriously old and well known in the massage art to repeat a procedure in order to get the results desired. *American Health* discloses treating cellulite by heavy duty kneading on one area for a period of time, several times a week and repeating this treatment 6 to 12 times.

It would have been obvious to one having ordinary skill in the art at the time the inventive method was made to repeat the method disclosed by *Werdning* at least once, in order to see results as taught by *American Health*.

Response to Arguments

5. Applicant's arguments filed July 10, 2003 have been fully considered but they are not persuasive. In response to Applicant's argument that *Werdning* teaches the maximum pressure applied to the skin to be 6 atmospheres, *Werdning* does not teach this to be the maximum pressure, but merely that best results for bursting nodules is obtained at pressure of about 6 atmospheres. Applicant discloses in the specification, as originally filed, that a pressure of 2-9 kg per cm² is particularly preferable for treating cellulite. Nowhere in the specification does Applicant teach that the specific pressure range of 10-30 kg per cm² leads to ruptures in the subcutaneous tissue and differently than a pressure within the range of 2-9 kg per cm². Again, *Werdning* does not teach 6 atmospheres to be the upper limit of pressure to be applied in the treatment of cellulite, but that best results are obtained at this pressure, which is in accordance with Applicant's specification as originally filed.

In response to Applicant's argument that *American Health* teaches that liposuction cannot eliminate cellulite, the Examiner has made no argument involving liposuction and it

appears Applicant's reference to page 102 is of a reference made of record (*Meyer*), but not applied to the claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

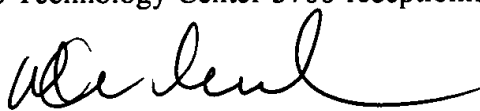
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting all formal correspondence is (703) 872-9306.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



Victor K. Hwang
February 16, 2004



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700